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Supreme Court, U.S.
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No. 09-185

IN THE

# Supreme Court of the United States

JOHN F. ANDERSON,
*Petitioner,*

v.

THE IOWA CITY DEVELOPMENT BOARD,
*Respondent.*

and

CITY OF DES MOINES, IOWA,
*Intervenor.*

**On Petition for a Writ of Certiorari to the Supreme Court of Iowa**

## REPLY TO OPPOSITION OF CERTIORARI

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## REPLY TO OPPOSITION OF CERTIORARI

28 U.S.C. §1257 jurisdiction of this court is clear 'where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution' and 'where any title, right, privilege, or immunity is specially set up' OR 'claimed under the Constitution'. Only with artifice can the respondents claim that issues were not preserved or waived when some constitutional protections have been specially set up and others claimed under the constitution.

The city does not claim any misstatement of fact or law in the petition pursuant to rule 15.2. It does not assert that §368.22 is not overbroad, or that the rights of the petitioner have not been violated under color of law by state actors, or that the courts have correctly construed *Hunter v. Pittsburgh*, or that the election on A98-03 was legal, or that UA04-31 (certiorari Petition pages 39a-48a) does not prove collusion, dishonesty and misrepresentation by the city, state and Iowa attorney general with the complicity of the courts. Under Iowa Rules of Court, all issues not refuted in a responsive brief are deemed admitted but in practice, neglect is simply the city and states way of denying facts and issues

## STATEMENT OF THE CASE

This is an annexation case, but this appeal concerns not just how the annexation failed to follow state law, but how the state actors failed to support the constitutions of Iowa and the United States by abrogating the rights of the petitioner under color of state law from the precursory 1990 actions through the 2009 refusal of rehearing by the Iowa Supreme Court. These proceedings have been appealed on the

grounds of what was ruled upon and also upon what the courts evaded through neglect.

## ARGUMENT

### I. OPPOSITION TO FIRST AMENDMENT ISSUES HINGES UPON MISREPRESENTATION OF THE RECORD

The city purports that no First Amendment issues were preserved by omission of a citation element that disproves the claim. The certiorari petition page 18a states in pertinent part: ". . . the following issues were raised before the agency and initially preserved 1) whether the statutes in question (Iowa Code §§368.4, 368.11, 368.19 and 368.22) are unconstitutional as non-uniform, overly broad, vague, and preempted . . ." §368.22 overbreadth is the First Amendment issue appealed and the court misrepresents that the issue was waived when the issues were actually dismissed pursuant to §368.22 (certiorari petition page 8a). The dismissal was subject to interlocutory and final appeal, not waived.

### II. OPPOSITION TO THE FOURTEENTH AMENDMENT ISSUES

Opposition to Fourteenth amendment issues depends upon the court ignoring: its own difficulty in defining the spectrum of due process; the actions of the state as evinced in the petition for certiorari appendix; the city's inability to identify any misstatements of fact or law in the petition as required by rule 15.2. It also requires the court to ignore the Iowa courts notion that there are no constitutional protections related to annexation (petition for certiorari 19a).

As the district court noted, (certiorari petition page 18a) the issues of takings, procedural, and substantive due process were raised and preserved before the agency, yet the court relied upon rote miscitation of *Hunter v. Pittsburgh* to abrogate due process guarantees in addition to disregarding multiple, and specific, state and federal citations as 'generic'. Here Iowa seems to require due process claims to be made with magic words at magic times.

Constitutional guarantees are meaningless if: a legislature can statutorily withdraw them or; the judiciary can fabricate precedent and arbitrarily enforce or ignore controlling law as well as validating invalid city and state actions and ignoring the content of citizen petitions for redress or; if the executive branch can lie, misrepresent, and claim it has fulfilled the guarantees with court approval or; if all post hearing state actions are immune from review if a party fails to submit prescient prophylactic argument of actions that may or may not take place months or years in the future or; if dismissal on exhaustion grounds means the issues are waived for further review. Honesty and integrity are fundamental elements of constitutional guarantees and dishonesty, misrepresentation or collusion violate the basic premises of constitutional law.

## III. VIOLATIONS OF U.S. CODE TITLE 42

Throughout proceedings, the petitioner has argued that state actions "under color of state law" denied his rights. If state actors are immunized for unconstitutional acts because citizens do not argue 42 U.S.C. §§1983, 1985, 1986 prior to the state taking the actions, then the law affords no protection even when the city and states transgressions are clear and

palpable as they are here. In this case, the Iowa District Court, Court of Appeals, and Supreme Court complicity with the misdirection and collusion of the city, agency, and attorney general was not indisputable until all state court action had completed and due process was denied, and 368.22 exclusivity operationally bars other court action.

"A due process violation actionable under §1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990)

In exceptional circumstances . . . appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings. *U.S. v. Atkinson*, 297 U.S. 157 (1936).

## IV. IOWA COURTS HAVE SEPARATE STANDARDS FOR LAWYERS AND *PRO SE* LITIGANTS

Based upon decisions related to this case pro se litigants are held to an impossible standard, where pro se pertinent citations are depreciated as generic while the fictional citations of members of the bar like the chronic distortion of *Hunter v. Pittsburgh*, the fabricated cites of the city's appellate brief, and UA04-31 findings of fact and conclusions of law, which would impeach evidence and testimony of any citizen, were validated by the courts. In the integral case of *Des Moines v. City Dev. Bd.*, 633 N.W.2d 305 (Iowa 2001) the petitioners 18 month old request for oral argument was denied by the Iowa Supreme

Court 15 hours prior to the hearing at behest of the Attorney General while all other represented parties gave oral arguments.

## CONCLUSION

As shown by the petition for certiorari and it's appendix, the federal questions presented have been preserved despite the city's misrepresentations. The failure, or intentional evasion, of the Iowa courts to address issues presented for review does not mean the issues were not properly before the court, and abstaining from ruling should not provide a shield for constitutional abrogation. The city's annexation was only completed by placing the residents of the territory outside the protection and processes of statutory and constitutional law, and this appeal is the final opportunity to afford them the protection that is theirs by fundamental right as natural persons and U.S. citizens against the unconstitutional actions of statutory creatures like Des Moines, the CDB, the Attorney General and the Iowa Courts.

Respectfully submitted,

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